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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,987	11/17/1999	MARK ALAN BURAZIN	13.497.2	5262

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KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/17/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/441,987

Applicant(s)

BURAZIN ET AL.

Examiner

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 48-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 48-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

RESPONSE TO AMENDMENT

1. Claims 1-22 and 48-71 are pending in the application. Claims 23-47 were cancelled in paper #6, filed February 26, 2002.
2. Amendments to the claims in paper #18, filed on August 21, 2003, have been entered in the above-identified application.

WITHDRAWN REJECTIONS

3. The double patenting rejection over Patent No. 6,077,590 of claims 1-6 of record in paper #17, page 3, paragraph #6 has been withdrawn due to Applicant's amendment in paper #18, filed August 21, 2003.
4. The double patenting rejection over Patent No. 6,077,590 in view of Wendt et al (5,672,248) of claims 1-22 *only* of record in paper #17, pages 3-5, paragraph #7 has been withdrawn due to Applicant's amendment in paper #18.
5. The 35 U.S.C. §102 rejection of claims 1-6 as anticipated by Archer et al. (6,077,590) of record in paper #17, page 5, paragraph #9 has been withdrawn due to Applicant's amendment in paper #18.
6. The 35 U.S.C. §103 rejection of claims 7-22 and 63-69 as over Wendt et al (5,672,248) in view of Brown et al. (5,693,403) of record in paper #17, pages 6-7, paragraph #10 has been withdrawn due to Applicant's amendment in paper #18.

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7. The 35 U.S.C. §103 rejection of claims 1-22 *only* as over Wendt et al (5,672,248) in view of Archer et al. (6,077,590) of record in paper #17, pages 7-9, paragraph #11 has been withdrawn due to Applicant's amendment in paper #18.

REJECTIONS REPEATED

8. The double patenting rejection over Patent No. 6,077,590 in view of Wendt et al (5,672,248) of claims 48-69 *only* of record is repeated for reasons previously of record in paper #17, pages 3-5, paragraph #7.

9. The 35 U.S.C. §103 rejection of claims 48-69 *only* as over Wendt et al (5,672,248) in view of Archer et al. (6,077,590) is repeated for reasons previously of record in paper #17, pages 7-9, paragraph #11.

Wendt et al. discloses creped or uncreped (*col. 2, lines 23-27*) throughdried tissue sheets with a bulk of about 13 to about 20 cubic centimeters per gram (*col. 3, lines 39-41*), where the bulk is defined as the caliper of a single ply of product divided by its basis weight (*col. 3, lines 40-42*). Furthermore, such tissue sheets having a basis weight in the range from about 10 to about 70 grams per square meter (*col. 3, lines 51-53*), which makes a single sheet caliper about 0.013 to about 0.14 centimeters, which is approximately 0.005 to 0.05 inches. The tissue also has a geometric mean modulus, or (geometric mean slope)/(geometric mean tensile strength), of less than 5 (*figure 6 and col. 10, lines 27-46*). Also, the tissue sheets have an absorbent capacity of about 11 grams of water per gram of fiber or greater (*col. 3, lines 66 bridging col. 4, line 2*). Since the absorbent rate of the tissue is determined by basically the same procedure as the absorbent capacity (see specification page 6, line 31 bridging page 7, line 10) and Wendt

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discloses the same method of determining the absorbent capacity with similar results and teaches almost all of the Applicant's claimed features, the limitation of the "absorbent rate of about 4 seconds or less" is considered to be an inherent property.

Wendt discloses all the limitations of the instant claimed invention except for the roll form, roll bulk, roll firmness, roll bulk/roll firmness ratio and the roll bulk/roll firmness ratio/single sheet caliper ratio.

Archer discloses a process of embossing and winding a tissue into a roll to obtain a roll bulk of from about 14 cc/g to about 20 cc/g (*col. 1, lines 59-63*) and a roll firmness from about 6 to about 10 mm (*col. 1, line 65-67*). This would produce a roll bulk/roll firmness ratio of about 20-25 cm²/g. Archer's process is aimed at increasing the bulk and strength of the final product (*col. 1, lines 27-33*).

Wendt and Archer are analogous because they both disclose through dried tissue products used for facial tissue, bath tissue and paper towels or the like.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the process of Archer on the tissue of Wendt in order to increase the bulk of the tissue. One of ordinary skill in the art would have been motivated to increase the bulk of the tissue because it would increase the strength of the tissue. It is desirable to have a high bulk because it increases the strength of the tissue for use in household products. Furthermore, the combination of Archer and Wendt would yield a roll bulk/roll firmness ratio/single sheet caliper ratio of about 142 to 1795 cm/g, based upon the roll bulk and roll firmness obtained by Archer and the single sheet caliper of Wendt.

NEW REJECTIONS

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claims 1-22, 70 and 71 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case amended claims 1, 7, 11 and 16 contain the limitation "non-embossed tissue basesheet". The specification does not disclose that the basesheet is not embossed, therefore this limitation is considered new matter.

Any negative limitation or exclusionary proviso must have basis in the original disclosure. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), aff'd mem., 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. MPEP § 2173.05(i)

ANSWERS TO APPLICANT'S ARGUMENTS

13. Applicant's arguments in paper #18 regarding the double patenting and U.S.C. §102 rejection of claims 1-6 as anticipated by Archer et al. (6,077,590) of record have been considered but are moot since the rejections have been withdrawn and new grounds of rejection are made.

14. Applicant's arguments in paper #18 regarding the 35 U.S.C. §103 rejection of claims 7-22 and 63-39 over Wendt et al (5,672,248) in view of Brown et al. (5,693,403) of record have been considered but are moot since the rejections have been withdrawn and new grounds of rejection are made.

15. Applicant's arguments in paper #18 regarding the Double patenting and U.S.C. §103 rejection of claims 1-22 over Wendt et al (5,672,248) in view of Archer et al. (6,077,590) of record have been considered but are moot since the rejections have been withdrawn and ~~due to~~ *the new grounds of rejection are made.*

16. Applicant's arguments in paper #18 regarding the Double patenting and U.S.C. §103 rejection of claims 48-69 over Wendt et al (5,672,248) in view of Archer et al. (6,077,590) of record have been carefully considered but are deemed unpersuasive.

Applicant argues that it would not be obvious to steam and emboss an uncreped throughdried basesheet because the process of Archer is directed to "creped basesheets." Wendt teaches that it does not matter if the throughdried tissue is creped or uncreped. Furthermore, Wendt teaches that the sheet can be calendered (*see Wendt, col. 2, line 25*), which is deemed to be embossing. Since Wendt discloses that creped or uncreped throughdried tissue are equivalent and further that the tissues can be embossed, it would not be unobvious to use the Wendt sheet in the process of Archer to increase the bulk and strength of the tissue.

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Applicant further argues that the process of Archer would only serve to stiffen the sheet with no anticipated benefit. Attorney arguments are not evidence and cannot take the place of evidence in the record. MPEP §2145.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays


If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for all communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0651.

ac

12/15/03




SANDRA M. NOLAN
PRIMARY EXAMINER